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10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 ELMER N. RODRIGUEZ, an individual and on
behalf of all others similarly situated,

14 Plaintiffs,
15 v.
16 GONSALVES & SANTUCCI, INC., a California
corporation; and DOES 1 through 100, inclusive,
17 Defendants.

18 Case No. 3:21-cv-07874-LB

19
20 DEFENDANT'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION TO DISMISS PURSUANT TO
FED. R CIV. P. 12(b)(6)

21 Hearing Date: December 9, 2021
Time: 9:30 a.m.
Judge Hon. Laurel Beeler
Location: Via Zoom
Webinar ID: 161 469 8626
Password: 546984

22 TO THE COURT, PLAINTIFF ELMER N. RODRIGUEZ, AND HIS ATTORNEYS OF
23 RECORD:

24 PLEASE TAKE NOTICE that pursuant to Federal Rule of Evidence 201(b), Defendant
Gonsalves & Santucci, Inc. ("G&S" or "Defendant") requests that the Court take judicial notice of the
following documents in support of its Motion to Dismiss:

25 I. REQUEST FOR JUDICIAL NOTICE

26 1. The collective bargaining agreement entitled "Agreement Iron Worker Employers
State of California and a Portion of Nevada And District Council of Iron Workers of the State of
California and Vicinity July 1, 2017 and June 30, 2020." A true and correct copy of which is attached

1 to as Exhibit A (also attached to the Declaration of Jessica Fraser at Dkt # 3-1).

2 2. The collective bargaining agreement entitled “Agreement Iron Worker Employers
3 State of California and a Portion of Nevada And District Council of Iron Workers of the State of
4 California and Vicinity July 1, 2020 and December 31, 2024.” A true and correct copy of which is
5 attached to as Exhibit B (also attached to the Declaration of Jessica Fraser at Dkt # 3-2).

6 3. The “Frequently Asked Questions” regarding the California Field Iron Worker
7 Vacation Trust Fund and “Summary Annual Report For Plan Year Ended May 31, 2010”, publicly
8 available at <http://www.ironworkerbenny.com/memberservices/vacation.html> (last accessed
9 November 4, 2021). A true and correct copy of which is attached as Exhibit C.

10 II. LEGAL DISCUSSION

11 Defendant respectfully requests the Court take judicial notice of these documents pursuant to
12 Federal Rule of Evidence 201(b), which allows the Court to take notice of adjudicative facts that “can
13 be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”
14 Fed. R. Evid. 201(b).

15 In resolving a Rule 12(b) motion, the court can consider (without converting the motion to a
16 summary judgment): (a) the complaint and answer; (b) any documents attached to or mentioned in the
17 pleadings; (c) documents not attached but “integral” to the claims; and (d) matters subject to judicial
18 notice. *See Davis v. HSBC Bank Nevada, N.A.*, 691 F3d 1152, 1159-1160 (9th Cir. 2012); *Coto*
19 *Settlement v. Eisenberg*, 593 F3d 1031, 103 8 (9th Cir. 2010). Documents not attached to the complaint
20 may be considered if their authenticity is not contested and the resolution of the operative complaint
21 depends on such documents. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001); *See also*
22 *United States v. Corinthian Colleges*, 655 F3d 984, 999 (9th Cir. 2011).

23 The Court may take “judicial notice of the governing collective bargaining agreement where
24 necessary to resolve issues of preemption.” *Johnson v. Sky Chefs, Inc.*, 2012 WL 4483225, at *1 n.1
25 (N.D. Cal. Sept. 27, 2012); *see also Busey v. P.W. Supermarkets, Inc.*, 368 F.Supp.2d 1045, 1049-50
26 (N.D. Cal. 2005) (granting judicial notice of a collective bargaining agreement in support of a motion
27 to dismiss due to Labor Management Relations Act section 301 preemption, where plaintiff failed to
28 plead the existence of the agreement but it related to the allegations in the complaint). *Jones v. AT&T*,

1 2008 WL 902292, at *2 (N.D. Cal. Mar. 31, 2008 (courts may take judicial notice of a collective
2 bargaining agreement in evaluating a motion to dismiss because they are materials “capable of accurate
3 and ready determination by resort to sources whose accuracy cannot reasonably be questioned”).

4 G&S respectfully requests that the Court take judicial notice of the documents described above,
5 as they are records capable of accurate and ready determination and directly related to the issues raised
6 by G&S’s motion to dismiss.

7
8 Dated: November 4, 2021

LITTLER MENDELSON P.C.

10 /s/ *William J. Kim*
11 Gregory G. Iskander
12 William J. Kim

13 Attorneys for Defendant
14 GONSALVES & SANTUCCI, INC.
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